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FILED

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Clerk, U S District Court
District Of Montana
Billings

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA,
BILLINGS DIVISION

WENDELL PLENTYHAWK, Plaintiff, v. MANSOOR SHEIKH, M.D., FREDERICK FERGUSON, M.D., and JENNIFER L. KELLY, NP, Employees of INDIAN HEALTH SERVICE and IHS CROW/ NORTHERN CHEYENNE HOSPITAL, a part of the U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Defendants.	Cause No. <u>CV-14-44-BIE-SPW</u> COMPLAINT (JURY TRIAL DEMAND)
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COMES NOW the Plaintiff, by and through his attorneys, Neel Hammond of Hammond Law, PLLC and Eric Rasmusson of Bulman Law Associates, PLLC, and for his Complaint against the Defendants alleges and states as follows:

I. PLACE OF CONFINEMENT

Plaintiff is not incarcerated.

II. JURISDICTION

Plaintiff brings this matter before the Court in accordance with the Federal Tort Claims Act (hereinafter: Act), 28 U.S.C. §§ 2671-2680.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Plaintiff exhausted all administrative remedies in accordance with the Act and 22 C.F.R. § 511.12 before filing this action before the Court.

IV. PARTIES TO CURRENT LAWSUIT

A. Plaintiff is a Crow Native and a citizen of Montana presently residing in Lodge Grass, Big Horn County, MT, mailing address: P. O. Box 33, Lodge Grass, MT 59050. He may be contacted at (406) 639-2056 and carnswl@aol.com.

B. At all times relevant to this Complaint Defendant Mansoor Sheikh, M.D. was an employee of Indian Health Service - Crow/Northern Cheyenne Hospital which is a part of the U.S. Department of Health and Human Services, a federal agency.

C. At all times relevant to this Complaint Defendant Frederick Ferguson, M.D. was an employee of Indian Health Service - Crow/Northern Cheyenne Hospital which is a part of the U.S. Department of Health and Human Services, a federal agency.

D. At all times relevant to this Complaint Defendant Jennifer L. Kelly, NP was an employee of Indian Health Service - Crow/Northern Cheyenne Hospital which is a part of the U.S. Department of Health and Human Services, a federal agency.

E. Defendant Indian Health Service - Crow/Northern Cheyenne Hospital is located at 1010 South 7650 East, P. O. Box 9, Crow Agency, Big Horn County, MT 59022. Its phone number is (406) 638-2626.

F. Defendant Indian Health Service - Crow/Northern Cheyenne Hospital is a part of the U.S. Department of Health and Human Services which is a federal agency. Office of the General Counsel is located at 200 Independence Avenue SW, Washington, D.C. 20201. The phone number is (877) 696-6775.

V. STATEMENT OF CLAIMS

A. *Count I - Deviation from Standard of Care*

1. Supporting Facts

From May to July 2012 Wendell Plentyhawk was overweight. He had a history of back trauma in his teens, a pilonidal cyst infection, and kidney stones. Plaintiff was 26 years of age (DOB xx/xx/1986). Plaintiff had no history of substance abuse.

Plaintiff received his medical care through the Indian Health Service (IHS) at Crow/Northern Cheyenne Hospital. During the times at issue, Mansoor Sheikh, M.D.; Frederick Ferguson, M.D.; Jennifer L. Kelly, NP; and all IHS personnel were employees of IHS.

On Friday, July 13, 2012, Plaintiff presented to Dr. Sheikh with complaints of severe back pains which left him crying on a stretcher. He related that he had to crawl on occasion. Plain x-rays of his back were unremarkable. Plaintiff received a diagnosis of "backache unspecified" and "drug seeking behavior." Plaintiff was given a shot of morphine and then sent home with Nabumetone and Advil.

On Tuesday July 17, 2012, Plaintiff came back in with continued severe

back pains, now with worsening left leg pains. He was seen by Jennifer L. Kelly, NP, given Tramadol, no scans or x-rays, and sent home.

On the next day, Wednesday the 18th of July, Plaintiff returned to Crow Hospital with back pains, now shooting down the left leg and with “legs shaking uncontrollably.” Plaintiff was seen by Frederick Ferguson, M.D., deemed to have a “normal” neurologic exam, and sent home with Motrin, following a drug screen and ultra-sound.

Finally, on Monday, July 30, 2012, Plaintiff presented to Crow Hospital with loss of bowel and bladder control. He was transferred to Billings Clinic where a decompression of the 3rd and 4th lumbar vertebrae was carried out for a SEVERE compression of Plaintiff’s cauda equina portion of the spinal cord.

According to Plaintiff’s physiatrist, Dr. Cahill, and his surgeon, Dr. Nauta, earlier intervention would have saved Plaintiff’s spinal cord function.

2. Defendants Involved

From July 13, 2012 until July 30, 2012, Plaintiff’s health care providers including, but not limited to: Mansoor Sheikh, M.D.; Frederick Ferguson, M.D.; and Jennifer L. Kelly, NP at IHS Crow/Northern Cheyenne Hospital negligently ignored Plaintiff’s dangerous symptoms, allowing the cauda equina portion of Plaintiff’s spinal cord to die and destroying the nervous intervention of Plaintiff’s lower extremities, his bladder, and his rectal sphincter.

VI. INJURY

Because of Plaintiff’s substandard and negligent care, Plaintiff is not expected to recover his bowel or bladder function. He is totally disabled from his work as a counselor and has met the definition of “disabled” as provided by the Social Security Act. Plaintiff walks with the assistance of a walker, guided by his

upper body. Plaintiff's lower extremities are now atrophic and demonstrated contractures. Plaintiff's physiatrist, Dr. Cahill, has told Plaintiff that no further recovery of his neurological function is likely.

VII. REQUEST FOR RELIEF

1. For money damages to compensate him for medical bills incurred in treating his injuries and those reasonably expected to be incurred in the future;
2. For money damages to compensate him for pain and suffering and for pain and suffering reasonably expected to be incurred in the future;
3. For money damages to compensate him for loss of income and for impairment of his ability to earn income in the future;
4. For money damages to compensate him for loss of established course of life and other damages recognized under Montana law;
5. For cost of suit;
6. Plaintiff demands a trial by jury on all triable issues; and
7. Any other additional relief as the Court may deem proper and just.

DATED this 17 day of March, 2014



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